

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

HECTOR A. VALLADARES
MIRANDA,

Petitioner,

vs.

ROBERT MADSEN, Warden of
Nebraska State Penitentiary; and
SCOTT FRAKES, Director of
Department of Corrections;

Respondents.

8:18CV72

**MEMORANDUM
AND ORDER**

This matter is before the court on Respondents' Motion for Summary Judgment. ([Filing No. 8](#).) Respondents argue that Petitioner Hector A. Valladares Miranda's Petition for Writ of Habeas Corpus ([Filing No. 1](#)) must be dismissed because it is barred by the limitations period set forth in [28 U.S.C. § 2244\(d\)](#). The court agrees and will dismiss the petition with prejudice.

I. BACKGROUND

A. Conviction and Direct Appeal

Pursuant to a plea agreement, Miranda pleaded no contest to first degree sexual assault. ([Filing No. 9-2 at CM/ECF pp. 2-3](#).)¹ The state district court sentenced Miranda to 35 to 45 years' imprisonment with credit for 368 days served. ([Id. at CM/ECF p. 3](#).) On February 18, 2015, the Nebraska Court of Appeals

¹ See also *State v. Miranda*, Case No. CR 13-1562, District Court of Lancaster County, Nebraska, at <https://www.nebraska.gov/justice/case.cgi>. See [Stutzka v. McCarville](#), 420 F.3d 757, 760 n.2 (8th Cir. 2005) (court may take judicial notice of judicial opinions and public records).

summarily affirmed Miranda's conviction and sentence on direct appeal. ([Filing No. 9-1 at CM/ECF p. 2.](#)) Miranda did not petition the Nebraska Supreme Court for further review. (*Id.*) The mandate was issued on March 26, 2015. (*Id.*)

B. Postconviction Motion

On February 18, 2016, Miranda filed a pro se verified motion for postconviction relief in the state district court. ([Filing No. 9-3 at CM/ECF pp. 1-6.](#)) On April 8, 2016, Miranda filed a verified amended motion for postconviction relief. (*Id.* at [CM/ECF pp. 7-18.](#)) On September 9, 2016, the state district court denied Miranda postconviction relief without an evidentiary hearing. (*Id.* at [CM/ECF pp. 19-23.](#))

Miranda appealed the denial of postconviction relief to Nebraska's appellate courts. On October 6, 2017, the Nebraska Court of Appeals affirmed the state district court's denial of postconviction relief. ([Filing No. 9-1 at CM/ECF p. 4](#); [Filing No. 9-2.](#)) The Nebraska Supreme Court denied Miranda's petition for further review on December 11, 2017, and issued its mandate on December 27, 2017. ([Filing No. 9-1 at CM/ECF p. 5.](#))

C. Habeas Petition

Miranda filed his Petition for Writ of Habeas Corpus in this court on February 16, 2018. ([Filing No. 1.](#)) Thereafter, Respondents moved for summary judgment ([Filing No. 8](#); [Filing No. 10](#)), arguing the habeas petition is barred by the statute of limitations. Miranda did not file a brief in opposition to Respondents' motion. This matter is fully submitted for disposition.

II. ANALYSIS

A. One-Year Limitations Period

The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), 110 Stat. 1214, establishes a one-year limitations period for state prisoners to file for federal habeas relief that runs from the latest of four specified dates. [28 U.S.C. § 2244\(d\)\(1\)](#). This case concerns only the first date listed in § 2244(d)(1): “the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review[.]” [28 U.S.C. § 2244\(d\)\(1\)\(A\)](#). “The statute of limitations is tolled while state post-conviction or other collateral review is pending.” *King v. Hobbs*, [666 F.3d 1132, 1135 \(8th Cir. 2012\)](#) (citing [28 U.S.C. § 2244\(d\)\(2\)](#)).

Here, Miranda’s conviction became final on March 20, 2015, the date on which Miranda’s time for pursuing review in the Nebraska Supreme Court expired. *See Gonzalez v. Thaler*, [565 U.S. 134, 137, 150 \(2012\)](#) (holding that, for a state prisoner who does not seek review in a State’s highest court, the judgment becomes “final” for purposes of [§ 2244\(d\)\(1\)\(A\)](#) on the date that the time for seeking such review expires); *see also* [Neb. Rev. Stat. § 24-1107](#) (thirty days to petition for further review from when the Court of Appeals issues its decision); [Neb. Ct. R. App. P. § 2-102\(F\)\(1\)](#) (stating that a petition for further review and memorandum brief in support must be filed within 30 days after the release of the opinion of the Court of Appeals). Accordingly, the one-year limitations period began to run from March 20, 2015.

On February 18, 2016, Miranda filed a motion for postconviction relief, which tolled the limitations period. *See King*, [666 F.3d at 1135](#). However, by the time the motion for postconviction relief was filed, a total of 335 days of the limitations period had already expired. *See Painter v. Iowa*, [247 F.3d 1255, 1256 \(8th Cir. 2001\)](#) (“[T]he time between the date that direct review of a conviction is completed and the date that an application for state postconviction relief is filed counts against the

one-year period”). The statute of limitations remained tolled until the postconviction proceedings concluded on December 27, 2017. *See Lawrence v. Florida*, 549 U.S. 327, 332 (2007) (a state postconviction application is considered pending until the state court issues its mandate or denies review, even if a petitioner files a petition for certiorari in the Supreme Court). Another 51 days of the one-year period expired between the conclusion of the postconviction proceedings and the filing of the habeas petition. Miranda’s habeas petition is, therefore, untimely under 28 U.S.C. § 2244(d)(1)(A). Miranda has not presented the court with any reason to excuse him from the procedural bar of the statute of limitations.

III. CERTIFICATE OF APPEALABILITY

A petitioner cannot appeal an adverse ruling on his or her petition for writ of habeas corpus under 28 U.S.C. § 2254 unless he or she is granted a certificate of appealability. 28 U.S.C. § 2253(c)(1); 28 U.S.C. § 2253(c)(2); Fed. R. App. P. 22(b)(1). The standards for certificates (1) where the district court reaches the merits or (2) where the district court rules on procedural grounds are set forth in *Slack v. McDaniel*, 529 U.S. 473, 484-485 (2000). The court has applied the appropriate standard and determined Miranda is not entitled to a certificate of appealability.

IT IS THEREFORE ORDERED that:

1. Respondents’ Motion for Summary Judgment ([Filing No. 8](#)) is granted.
2. Petitioner’s habeas petition ([Filing No. 1](#)) is dismissed with prejudice because it is barred by the limitations period set forth in 28 U.S.C. § 2244(d).
3. The court will not issue a certificate of appealability in this matter.
4. The court will enter a separate judgment in accordance with this order.

Dated this 22nd day of October, 2018.

BY THE COURT:

s/ Richard G. Kopf
Senior United States District Judge